

RED FLAGS HANDOUT

Below is a list of Red Flags that may help regulators identify IGRA violations. When one of a combination of these are observed or reported, additional investigation will be needed to determine if there is actually a violation. This is not an exhaustive list and there will be other actions not listed that may constitute an IGRA violation.

Management w/o approved contract

- Operation managers appear not to be making management decisions or not to have the authority to make decisions. This may be for one part of the gaming or all gaming.
- Are policies and regulations written by outside parties or are approved by 3rd parties before implementation?
- Are 3rd parties present at the casino to consult on issues when not needed or outside agreement?
- Do 3rd parties direct employee activities, directly or indirectly?
- Do 3rd parties maintain close relationship with an elected official(s), or top management?
- Are 3rd parties available to meet with the regulators, or do they disappear when you are on site?
- Do 3rd parties have unescorted access to restricted areas like back of the house, gaming machines, financial information, etc.?
- Is the 3rd party's work consists of tasks that management would typically perform?
- Written documentation between the 3rd party "consultant" and the tribe is non-existent, limited, or off topic.
- The 3rd party is reviewing and approving promotions/marketing.
- Employees and regulators who do not agree with the 3rd party or attempt to regulate the 3rd party are demoted or terminated.
- Operation managers appear not to be making management decisions or not to have the authority to make decisions. This may be for one part of the gaming or all gaming.
- Does the 3rd party have unrestricted access/remote access to your games/gaming system(s) that will allow for changes to be made in relation to payout of the games/gaming system(s).
- Is the 3rd party deciding the payout percentages on your games/gaming systems?
- Is the 3rd party deciding what games will be offered and/or where they will be placed on the floor?
- Is a 3rd party giving final approval of changes to payout percentages, changes of games/gaming system(s) in the tribal facility?
- Does the 3rd party participate in or are they responsible for selecting other vendors at the casino? Including back off house accounting system, insurance, other EGM vendors.
- Does the 3rd party have to agree with management on the decisions above? Consensus is a form of management.

Management w/o approved contract continued:

- Does the 3rd party have control physically or by approval of any of the casino accounts or expense payments?
- Does the manager get a paycheck or a lump sum based on a percentage of revenue?
- If manager receives a bonus based on a percentage of revenue, does their contract list what must be accomplished to achieve the bonus?

SPI

- Most common: are payments to the vendor excessive, based on a percentage of revenue, over a long period of time or indefinite? Vendor may have provided significant services in the beginning, but eventually is doing nothing to receive the payments.
- Does the agreement extend beyond 5 or 7 years or beyond the needs of the tribe?
- Does default of the agreement give the vendor land, buildings, or control over gaming?
- Does the vendor control payout, game placement, game selection?
- Does the agreement give the vendor the majority of the floor space or a high percentage of the revenue from each machine or system?
- Compensation that is out of proportion for work performed and/or is based on a percentage of net win, net gaming revenue or gross gaming revenue.
- 3rd party seldom present at the casino (1 x week, 1 x month, etc.), yet paid significant compensation.
- Previous agreements and contracts handled by multiple parties are consolidated into one party at a higher rate of pay.
- Previous contract rates are greatly increased (x2, x10, x100) for no apparent reason when transferred to a new party.
- Repayment to developer is unlimited or lengthy and based on a percentage of revenues.
- Termination of contract is in favor of vendor or difficult for tribe to terminate.
- Is the vendor paying the tribe game placement fees and retaining substantial control over the machines/systems?

Misuse of Gaming Revenue

- Is there a lack of policies and procedures in procurement and accounting?
- Has the TGRA encountered difficulty in promulgating policy and procedures to protect the gaming operation against fraud both internally and externally?
- Are all gaming revenue sources accounted for in the cage and vault and expensed through the casino accounting procedures?
- Is the casino distributing payments directly to tribal members or individuals under the guise of an undocumented tribal assistance programs or loan program, where there is no expectation of repayment?
- Are there proper policy and procedures in place for the issuance of complimentary, most notably discretionary complimentaries. (Who is issuing the comps? Do they have authority within policy to issue (dollar amounts and job titles of issuer)? Who are they issuing the comps too? Are they players, do have any association with vendors, are they issued to decision makers for the gaming facility or tribe?)

Misuse of Gaming Revenue Continued:

- Previous agreements and contracts handled by multiple parties are consolidated into one party at a higher rate of pay.
- Previous contract rates are greatly increased (x2, x10, x100) for no apparent reason when transferred to a new party.
- Fraudulent purchases by casino employee/management.
- Payment of ghost employees.
- Unauthorized write-off of player debt or NSF checks.
- Promotion fraud.
- Misuses of casino charge cards.
- Misuse of complementary services.
- Operating a casino without an approved budget makes misuse harder to track.

Misc. Red Flags

- No one has a copy of the agreement and the CO cannot find anyone who has reviewed it.
- TGRA or Operations attempt to defend the Parties presence and contributions prior to inquiry.
- Attempts to avoid licensing process or is not fully cooperative.
- Contract is overly simple and vague.
- Presents of new gaming machine vendors and product not typically seen in the market or appears to be substandard in performance.

**NATIONAL INDIAN GAMING COMMISSION
BULLETIN**

No. 94-5

October 14, 1994

**Subject: Approved Management Contracts v. Consulting Agreements
 (Unapproved Management Contracts are Void)**

One of the purposes of the Indian Gaming Regulatory Act (IGRA or Act) is:

to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players.

25 U.S.C. 2702(2). To carry out this purpose, the Act requires, among other things, the approval of management contracts for the operation and management of Indian gaming operations. 25 U.S.C. 2705(a)(4); 25 U.S.C. 2710 (d)(9); and 25 U.S.C. 2711.

Questions have been raised as to what distinguishes a management contract from a consulting agreement. The answers to these questions depend upon the specific facts of each case. The Commission stands ready to make a decision as to whether or not a particular contract or agreement is a "management contract" under Commission regulations. However, before doing so, the Commission must see the entire document including any collateral agreements and referenced instruments.

The consequences are severe for a manager who mistakes his management agreement for a consulting agreement. Consequently, the Commission offers the following information and observations.

MANAGEMENT CONTRACTS AND OTHER GAMING RELATED CONTRACTS

"Management contract" is defined as:

any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of the gaming operation.

NIGC approval of management contracts is required by IGRA as a means of protecting the tribes. A requirement for including within the scope of audit of the gaming operation other contracts, including supply contracts, is similarly a means of protecting the gaming operations and ultimately the tribes from those deemed unsuitable for Indian gaming or on terms at variance with IGRA's requirements. Other gaming-related contracts not providing for management may require the approval of the Secretary of the Interior.

EFFECT OF NON-APPROVAL

A management contract that has not been approved by the Chairman is void. Furthermore, the management of a gaming operation under a "management" contract or agreement that has not been approved could result in the gaming operation being closed. The consequences to the parties are:

- o The tribe would have to close down the operation or operate it on its own, and
- o The management contractor would have to vacate the operation and could be subjected to legal action to return to the tribe any funds it received under the contract.

MANAGEMENT

Management encompasses many activities (e.g., planning, organizing, directing, coordinating, and controlling). The performance of any one of such activities with respect to all or part of a gaming operation constitutes management for the purpose of determining whether any contract or agreement for the performance of such activities is a management contract that requires approval.

Furthermore, the Congress and the Commission have determined that certain management activities can or should be present in a management contract. The presence of all or part of these activities in a contract with a tribe strongly suggests that the contract or agreement is a management contract requiring Commission approval. Such activities or requirements with respect to the gaming operation include, but are not limited to, the following:

- o Maintenance of adequate accounting procedures and preparation of verifiable financial reports on a monthly basis;
- o Access to the gaming operation by appropriate tribal officials;
- o Payment of a minimum guaranteed amount to the tribe;
- o Development and construction costs incurred or financed by a party other than the tribe;

- o Term of contract that establishes an ongoing relationship;
- o Compensation based on percentage fee (performance); and
- o Provision for assignment or subcontracting of responsibilities.

It has been argued that if all of the ultimate decision-making is retained by the owner, the agreement should be construed as a consulting agreement. Some gaming operations are owned by individuals, some by corporations, some by partnerships, some by Indian tribes, etc. Regardless of the form of ownership, the owner always has the ultimate authority when it comes to decision-making. The exercise of such decision-making authority by the tribal council or the board of directors does not mean that an entity or individual reporting to such body is not "managing" all or part of the operation.

CONSULTING CONTRACT

What then is a consulting contract and what regulatory requirements would apply? The answers to such questions must be made on a case-by-case basis because they depend on the facts and circumstances of the individual situation and the actual day-to-day relationship between the tribe and the contractor.

An agreement that identifies finite tasks or assignments to be performed, specifies the dates by which such tasks are to be completed, and provides for compensation based on an hourly or daily rate or a fixed fee, may very well be determined to be a consulting agreement. On the other hand, a contract that does not provide for finite tasks or assignments to be performed, is open-ended as to the dates by which the work is to be completed, and provides for compensation that is not tied to specific work performed is more likely to be construed as a management contract.

Regardless of the specifics of a consulting agreement, advance approval is not required but an advance determination under Bulletin No. 93-3 is strongly recommended to avoid a later decision by the Commission that the agreement is a management contract.

REQUIREMENT FOR DETERMINATION

The Commission recognized early the need to provide guidance on which contracts are subject to approval and therefore issued Bulletin No. 93-3 on July 1, 1993. It provides for the submission of gaming-related contracts and agreements to the NIGC for review. The Bulletin states:

In order to provide timely and uniform advice to tribes and their contractors, the NIGC and the BIA have determined that certain gaming-related agreements, such as consulting agreements or leases or sales of gaming equipment, should be submitted to the NIGC for review. In addition, if a tribe or contractor is uncertain whether a gaming-related agreement requires the approval of either the NIGC or the BIA, they should submit those agreements to the NIGC.

The NIGC continues to make itself available to review all such gaming-related contracts and agreements.

Handout #3

Management without a contract

Neighbor Mike runs the local hardware store where Tribe frequently purchases supplies. Tribal Chairman Charlie let's Mike know that the Tribe will soon begin construction of a new casino. Mike tells Charlie that he can acquire substantial supplies for the Tribe at a discount. Charlie agrees and frequently consults Mike for recommendations on contractors. Once the foundation is poured, Mike tells Charlie he can get him an excellent deal on an electrician. Charlie tells him to go for it. Mike gets his brother-in-law Bobbie to give him a good deal on electrical work but Bobbie needs a contract for tax purposes in a hurry (its December 30). In the rush, Mike signs the contract himself on behalf of the Casino.

Having done such a great job helping the Tribe get the Casino constructed and because Neighbor Mike is an excellent businessman, he continues to help Charlie get the Casino going.

The Tribe is not happy with their slots manager so Mike volunteers to find a replacement. Mike heads out to G2E and meets Eric. Mike has dinner with Eric and has extensive discussions with him about the possibility of Eric becoming the slots manager at Tribal Casino. They discuss salary, roles and responsibilities, and timing of Eric's employment as Slots Manager at Tribal Casino. Mike informs the Tribal Economic Development Committee that he has found a new slots manager. Mike invites Eric out to meet with Tribal ED. After a very short interview, Eric waits outside. Mike comes out and offers Eric the job; Eric accepts and comes to work at the Tribal Casino.

Mike is at the Casino daily for four months. He gives Eric "advice" about what the Tribe wants him to do. Mike begins to regularly invite vendors into the Casino; Mike has Casino employees open machines and monitor vendor's activities while working on the machines.

In return for his constant attention, Chairman Charlie uses Mike's store for all the Casino's needs. Every year, the Tribe gives Mike the "Neighbor of the Year" award of \$100,000.

Directions: Review the Red Flags (handout1), and Bulletin 94-05 (handout2), review the scenario and answer the questions below?

Practical Exercise 1

Directions: review the scenario in handout 3 (management without a contract) and answer the following questions.

1. Identify any Problematic actions (Group Discussion)? _____

2. If problematic actions are identified what would be your next steps? _____

3. Is anyone managing without an approved contract if so who? _____

CONSULTANT SERVICES AGREEMENT

THIS CONSULTANT SERVICES AGREEMENT (the "Agreement"), dated December 25, 2016, is made by and between the ABC Gaming Board, a governmental subdivision of the ABC Board (hereinafter "Board"), located at 1234 West Over there St., Midway, Oklahoma, 70001, and Harry Spotter, an individual, whose mailing address is 6789 East Right there Ave, Anytown, America 10001 (hereinafter the "Consultant"), each party hereto referred to hereinafter individually as a "party" and collectively as the "parties."

WITNESSETH:

WHEREAS, the BOARD desires to retain an outside, independent consultant for a limited period of time to render the Services set forth herein with respect to the Project; and

WHEREAS, Consultant, who has knowledge and expertise with respect to the Services, including providing operational guidance to tribal gaming operations, desires to render consulting services to BOARD for the Project on a part-time basis for a limited period of time.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I. DEFINITIONS

The following terms shall have the following meaning for purposes of this Agreement: "**Project**" shall mean and refer to the BOARD's ongoing initiatives with respect to the development and expansion of its business and gaming operations, including but not limited to analyzing and developing possible business and gaming opportunities.

"**Services**" shall mean and refer to the services to be performed by Consultant for the Project, which will include assisting the BOARD with further development and expansion of its business and gaming operations, including but not limited to the development of possible business and gaming opportunities, the training and development of the BOARD management team, the preparation and development of policies and procedures for BOARD operations, the development of plans for further expansion of BOARD operations, the development of marketing strategies for BOARD's operations, the rendition of advice with respect to hiring and further developing BOARD's senior leadership team, and additional specific related matters and tasks to be assigned by the BOARD's Board of Directors from time-to-time.

ARTICLE II. TERMS RELATING TO CONSULTANT'S SERVICES

2.01 Consultant's Control of the Services. The BOARD hereby engages the Consultant to render professional/business advice concerning the Project as an independent, outside consultant and not as an employee of the BOARD, and the Consultant shall at all times control the specific details of how the Services hereunder shall be performed, what equipment and tools to use, support staffing, and the purchase of necessary supplies.

2.1 On-Site Presence of Consultant. Consultant acknowledges and agrees that the nature of the Project and the Services require that Consultant will need to meet with the BOARD and other members of the

Handout #4

BOARD's senior leadership team from time-to-time for purposes of planning and to discuss ongoing tasks and matters relating to the Project. Consultant agrees to attempt to be reasonably available to attend meetings, in person, with the BOARD and personnel designated to oversee and manage the Project.

2.2 Consultant Work Materials and Supplies. Consultant shall be responsible for providing Consultant's own office supplies and other work materials necessary for carrying out the Services. BOARD shall make available to Consultant a work station or other area in which to work at the Project Site, as necessary and as requested by Consultant.

2.03 Limitations on Consultant/Board. In no event shall Consultant: (i) control or authorize the expenditure Project funds or monies; (ii) exercise any control over the operation of the BOARD and/or the Project Site; or (iii) direct or supervise BOARD employees/personnel.

ARTICLE III. COMPENSATION

3.1 Consultant Compensation. BOARD agrees to pay Consultant the total annualized sum of One Hundred Thousand Dollars (\$100,000.00) or 10% of the Gross Gaming Revenue whichever is greater (the "Compensation") for the consulting Services to be rendered under this Agreement, commencing on the 1st day of the month beginning January 1, 2017 (the "Commencement Date." The Compensation will be paid to the Consultant on a monthly basis, and on the same schedule as for casino employees. Such Compensation will be paid only so long as the Project continues or until the end of the Term.

ARTICLE IV. STATUS OF CONSULTANT AS CONTRACTOR

4.1 Independent Contractor Status. The status of Consultant shall be that of an independent contractor, and Consultant shall not have the status of an employee of the BOARD. Consultant's sole compensation shall be as set forth herein, and Consultant shall not be eligible to receive any additional compensation than that provided hereunder, and shall not be eligible for participation in benefit plans offered by the BOARD to its employees.

4.2 Consultant's Option to Engage in Other Businesses. BOARD acknowledges that Consultant has other work and employment and provides similar services as those to be rendered hereunder to other clients, and that Consultant is not agreeing or committing hereunder to provide the Services on an exclusive basis to the Board .

4.3 Tax Reporting; Tax Obligations.

4.3.1 Consultant's Obligations. Consultant shall be solely responsible for satisfaction of all obligations of the Consultant to report and pay taxes with regard to compensation earned pursuant to this Agreement, and further agrees to hold the BOARD harmless from any liability for unpaid taxes or penalties imposed on Consultant in conjunction with Consultant's earnings hereunder.

4.4 Non-Agency Status of Consultant. The parties acknowledge and agree that Consultant is retained solely to provide to the BOARD the Services set forth herein, shall not be an agent of the Board for any purpose, and is not authorized to act on the BOARD's behalf.

6.01 Effective Date. This Agreement shall become effective as of the latter of (i) the Commencement Date or (ii) the date this Agreement is executed by the last party to sign or (iii) the date of final approval of this Agreement by an action of the Business Committee of the BOARD.

6.02. Term. The term of this Agreement shall begin on the Commencement Date and continue until the latter of (i) final completion of the Project or (ii) a termination of the Agreement or (iii) December, 2018, on which date this Agreement shall expire by its terms unless extended by written agreement of the parties.

ARTICLE xm. TERMINATION

13.1 Notice of Breach. Upon any material breach of this Agreement, the non-breaching party shall cause notice to be delivered to the breaching party setting forth the nature of the breach and the specific portions of the agreement relevant thereto. Said notice shall recite a cure period of five (5) days from the date of receipt of said notice by the breaching party. In the event said cure period expires without appropriate response from the breaching party, a default shall automatically occur and either party may terminate this Agreement immediately.

13.2 Termination for Specific Reasons. In the event of any of the following or any similar events either party may terminate this Agreement immediately by providing notice to the other party:

(a) completion of all or particular phases of the Services or the Project; (b) insolvency of the other party; (c) filing of a voluntary petition in bankruptcy by the Consultant; (d) filing of any involuntary petition in bankruptcy against the other party; (e) appointment of a receiver or trustee for the Consultant; (f) execution of an assignment for the benefit of creditors by the other party; or (g) there is a material adverse change in the other party's financial condition, including the BOARD's lack of funding to complete any portion of the Project.

13.3 Termination for Convenience. Notwithstanding any other provision or basis for a termination herein, by virtue of the nature of the professional/business services and advice to be rendered by the Consultant hereunder, this Agreement may be terminated by any party hereto at any time, with or without cause, upon reasonable notice to the other party.

13.4 Cancellation of Project. The BOARD may discontinue the Project or Consultant's services at any time, at its sole discretion, upon reasonable notice to the Consultant. Consultant acknowledges and agrees that, due to the nature of the Project, the BOARD may at any time determine that the Project and Consultant's services are no longer necessary, and Consultant agrees that it has no expectation hereunder of earning the full Compensation for the entire term of this Agreement. In the event the BOARD elects, in its discretion, to cancel or discontinue Consultant's services or the Project, the BOARD shall provide written notice of such cancellation to Consultant, and the Consultant will be paid for then-current month on a pro-rata basis, along with any expenses due and owing to Consultant, as provided hereunder. The sums set forth in this paragraph shall serve as the total liquidated damages due and owing to the Consultant in the event of a termination or cancellation hereunder, and Consultant shall not be entitled to any further monetary compensation or damages in such event.

Handout #4

Handout #4

Facts for scenario in Handout #4

1. Harry Spotter's resume and gaming vendor license indicates he has 15 years of combined experience managing various casinos.
2. The Board has drawn up a new organization chart that places Spotter between the board and the gaming operation.
3. One of Spotter's first actions was to begin rewriting position descriptions for management team members.
4. Casino employees are referring to Mr. Spotter as "the new boss".
5. Casino Manager Sherry Lost is requesting to visit with Mr. Spotter before they respond to the TGRA's inquiries and request for internal control remedies.
6. The most recently hired employee tells the TGRA compliance officer that she was interviewed by Mr. Spotter and he offered her the position. She met the Casino Manager Lost on her first day at work.
7. The Board requests the TGRA cc Mr. Spotter on all correspondence.
8. When GM Lost emails or calls the Board, Mr. Spotter responds.

Practical Exercise 2

*** When reviewing contracts is important to consider all provisions**

Directions: For the purpose of this exercise only review the following contract provisions Services, Term and Financial Compensation. Answer the following questions:

Services

1. Are the Services to be provided specific or overly broad? _____

2. Are there specific deliverables associated with this provision? If so can these deliverables be measured objectively? _____

3. Can you determine when the deliverables should be completed? _____

Term

1. Can you identify when the contract begins and ends? _____

2. Could this project go beyond 7 (seven) years? _____

3. If the Tribe terminates the contract in July 2018 are they still responsible for payment until December 2018? _____

Compensation

1. What is the consultant's annual compensation? _____
2. GGR at the property for the previous year totaled \$28,000,000 based on the compensation provision what could be the potential compensation if the Tribe realizes the same GGR during the contract year? _____

3. Does the compensation match the services that are to be provided? _____

EXCLUSIVE LEASE AGREEMENT

THIS EXCLUSIVE LEASE AGREEMENT ("Lease") is made and entered into this ____ day of _____, 201X, by and between THE TRIBE ("LESSEE"), a federally recognized Indian tribe, whose principal address is ABC Street, Town, State 00891, and CASINO, LLC, a limited liability company, whose address is 200 Downton Street, Downtown, State 00000 ("LESSOR").

LESSEE desires to remodel a former gaming facility and has solicited the assistance of LESSOR in this endeavor.

LESSOR desires to finance this endeavor by LESSEE and to hold the Exclusive right to lease to LESSEE for use in the gaming facility. All equipment described in any such Lease Schedules shall be collectively referred to as the "Equipment".

NOW THEREFORE, LESSOR and LESSEE agree as follows:

1. **LEASE.** LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR the Equipment during the applicable Rental Term (as defined below) thereof, as identified in the applicable Lease Schedule, subject to the general terms and conditions set forth herein.

2. **TERM, RENT AND PAYMENT.**

2.1 **Term.** The rental term of this Exclusive Lease Agreement shall be for the initial period of one hundred and twenty (120) months from the date of the reopening of the Casino facility, and any subsequent amendments or extensions thereafter. Following the commencement and operation of gaming for a period of ninety (90) or more days, and throughout the term of this agreement, LESSOR shall determine the number and type of games to be provided by LESSOR. LESSOR's commitment to provide specific gaming equipment is subject to the terms of both this Agreement and the Lease Schedules by which such specific gaming equipment is committed to the LESSEE by LESSOR at the request of LESSEE. This Lease cannot be unilaterally cancelled or terminated by LESSEE except for good cause as expressly provided herein.

2.2 **Rent.** It is agreed by the Parties that during the first ninety (90) days of operation the LESSEE will be entitled to retain forty per cent (40%) of the net revenues from the facilities, and the LESSOR shall be entitled to receive sixty per cent (60%) of the net revenues from the facilities. Thereafter, LESSEE's obligation to pay rent for each Unit shall be increased to the percentage indicated below for the 'daily rent for the remainder of the term of this Agreement. The daily rent ("Basic Rent") for each Unit shall be equal to 60% of the Daily Win, or Hold, from such Unit during each Lease Fee Period. As used in this Lease, the "Daily Win" or "Hold" from each Unit shall mean the amount equal to all coin and currency wagered by players of such Unit during any given day, less that portion of such coin and currency paid out in total prizes awarded by such Unit to players thereof on said given day.

3. **PREPARATION, DELIVERY AND INSTALLATION.**

3.1 **Preparation of Facility.** LESSEE shall review and approve of the plans for the improvements to the property that will be used for a gaming facility and LESSOR will make improvements in accordance with the approved plans. LESSOR will determine and inform LESSEE of the number and kind of games, including electronic and table games, that LESSEE desires to be installed, and all subsequent changes to the number and kind of games to be placed on the floor of the facility will be determined by LESSOR in consultation with LESSEE.

3.2 Selection of Units. In accordance with the terms of this Agreement, LESSOR shall determine and advise LESSEE in writing, as to the initial gaming machines and configurations of gaming machines LESSEE desires to be included as those Units first installed and placed within the facilities, and shall thereafter from time to time during the term of the Agreement, request any additionally desired changes to the Lease Schedules. LESSOR shall make all reasonable effort to obtain LESSEE's preferred gaming machines. In order to facilitate the formulation of such requests, LESSOR agrees to provide advice and recommendations as to the types and best configurations of gaming machines that are available to LESSEE and other related matters. LESSOR shall have no liability under this Lease or otherwise for any delays in delivery, or for the failure by the supplier to deliver any Equipment or to fill any purchase order or meet the conditions thereof.

3.3 Delivery and Acceptance. LESSOR, will hold LESSEE harmless of all transportation, packing and installation charges in connection with the delivery and installation of the gaming equipment selected by LESSEE. Within five (5) days after receipt of any one or more Units, LESSEE shall furnish LESSOR with a written statement acknowledging receipt of the Units in good operating condition and repair, and accepting them as satisfactory in all respects for the purposes of this Lease (the Units shall be deemed accepted by LESSEE if LESSEE fails to timely provide such a statement).

4. NET LEASE AND UNCONDITIONAL OBLIGATION. This Lease, including each Lease Schedule, is a net lease and LESSEE's obligation to pay all Rent due and the rights of LESSOR or its assignees in, and to, such Rent shall be absolute and unconditional under all circumstances and shall not be affected or impaired by any of the following: (i) any interruption or cessation of use, operation or possession of the Equipment for any reason whatsoever; or (ii) any insolvency, bankruptcy, reorganization or similar proceedings instituted by or against LESSEE.

5. MAINTENANCE.

5.1 Central Gaming System; Location and Use. (a) LESSEE shall keep and use the Leased Equipment only within the designated facility; (b) LESSEE shall provide and maintain at all times at its expense an appropriate and industry accepted method and means of interfacing of components for the Equipment, including all controllers, network cabling and other hardware components, software and software licenses; (c) LESSEE shall have sole possession, control and authority to operate the Equipment and shall at all times comply with, the Compact and any applicable federal, state or tribal laws or regulations; (d) LESSEE shall operate and maintain the Equipment or System in accordance with the manufacturer's instructions at its own expense and shall not make any repairs or alterations to the same which interfere with the normal and satisfactory operation or maintenance of the same or which endanger manufacturer's warranties or create a safety hazard; and (e) LESSEE shall comply with all applicable laws and governmental regulations.

5.2 Maintenance; Game Kits. LESSEE, at its sole cost and expense, shall properly maintain the Equipment in good operating condition and shall make all necessary repairs, alterations and replacements thereto (collectively, "Repairs"). LESSEE shall permit LESSOR's representatives to enter the Premises where any Unit is located for purposes of verifying status of machines. **EQUIPMENT PERFORMANCE.** The overall understanding of the parties to this Lease that all management decisions relating to the operation of LESSEE's gaming operations, including gaming equipment and the placement of same on the facility floor, shall be made by LESSEE and that LESSEE has complete day-to-day management and control of every aspect of the operations of its gaming business.

6. LIENS AND ENCUMBRANCES.

6.1 Personal Property. Each Unit is personal property and LESSEE shall not affix any Unit to realty so as to change its nature to a fixture or real property. LESSOR and/or its agents or representatives, expressly retains all rights of ownership in and title to the Equipment.

6.2 Liens and Encumbrances. LESSEE shall not directly or indirectly create, incur or suffer a mortgage, claim, lien, charge, encumbrance or the legal process of a creditor of LESSEE of any kind upon or against this Lease or any Unit. LESSEE shall at all times protect and defend, at its own cost and expense, the title of LESSOR from and against such mortgages, claims, liens, charges, encumbrances and legal processes of creditors of LESSEE and shall keep all the Equipment free and clear from all such claims, liens and legal processes.

7. RETURN OF EQUIPMENT.

7.1 Duty of Return. At the expiration of the Rental Term or upon termination of the Lease, LESSEE shall make each Unit available at the applicable Premises for collection by LESSOR or its designee at LESSOR's sole cost and expense.

7.2 Failure to Return. If LESSEE fails to return the Equipment or any portion thereof, as provided in Paragraph 8.1 above, within fourteen (14) days following termination or earlier expiration of this Lease, then LESSEE shall continue to pay to LESSOR additional Rent for each Lease Fee Period. In addition, LESSOR shall have the right (but not the obligation) to enter the Premises where any Unit which LESSEE has failed to return in accordance herewith may be located to collect and remove the same.

8. RISK OF LOSS: INSURANCE.

8.1 Risk of Loss. LESSEE shall bear the risk of all loss or damage to any Unit or caused by any Unit during the period from the time the Unit is delivered to the applicable Premises until the time it is returned as provided herein, and shall hold LESSOR harmless and indemnify LESSOR for the cost of defense and any awards made against LESSOR by any third party resulting from same in accordance with 11 below.

8.2 Damage or Destruction of Equipment. If any Unit is lost, stolen or destroyed, or, in LESSOR's opinion, damaged beyond repair ("Event of Loss"), this Lease and the applicable Lease Schedule shall remain in full force and effect with respect to that Unit. LESSEE shall promptly notify LESSOR of any Event of Loss and shall promptly replace such Unit at its sole expense with a Unit of equivalent value, useful life and utility, and similar kind, in substantially the same condition as the replaced Unit was in immediately prior to the Event of Loss.

8.3 Insurance. LESSEE, as authorized by Lessor, shall obtain and maintain in full force and effect full replacement cost property insurance against all risk of loss (including theft, fire, wind, hail, vandalism, malicious mischief and all elements) with respect to the Equipment and in addition, bodily injury and property damage liability coverage in the minimum amount of Two Million Dollars (\$2,000,000) protecting LESSEE against all bodily injury and property damage claims which may arise as a result of LESSEE's use and operation of Equipment. Such insurance shall be: (i) in the case of a property insurance claim pertaining to the gaming machines of LESSOR, name LESSOR and its Assignees, if any, as first loss payees as their interests may appear, and in the case of the liability insurance, name LESSOR and its Assignees, if any, as additional insureds; and (ii) provide that the policy may not be canceled or materially altered without thirty (30) days prior written notice to LESSOR and its Assignees. Such insurance shall be placed with an (A) or higher rated insurance company licensed by the State Insurance Commissioner for the State of Oklahoma. LESSEE shall furnish to LESSOR, upon request and so long as this Lease remains in effect, insurance certificates to LESSOR and its Assignees, demonstrating the existence of the insurance required hereunder and premium paid.

9. TAXES AND EXPENSES.

9.1 Taxes. LESSEE agrees to report, file, pay promptly when due to the appropriate taxing authority and indemnify, defend, and hold LESSOR harmless from and against any and all taxes and any taxes or similar charges payable pursuant to any present or future tribal-state gaming compact entered into between LESSEE and the State, and all assessments, license fees and other federal, state, local or tribal governmental charges of any kind or nature, together with any penalties, interest or fines related thereto (collectively, "Taxes") that pertain to the machines.

10. INDEMNIFICATION. LESSEE hereby assumes liability for and agrees to indemnify, defend, protect, save and hold harmless the LESSOR, its agents, employees, directors and assignees from and against any and all losses, damages, injuries, claims, penalties, demands and all expenses, legal or otherwise (including attorneys' fees) of whatever kind and nature arising from the possession, use, condition, operation or maintenance of the Equipment while in the possession of LESSEE.

11. DISCLAIMERS; MANUFACTURERS WARRANTIES; PRIZE CLAIMS.

12. ASSIGNMENT OF LEASE.

12.1 Binding Agreement. This Lease and each Lease Schedule shall inure to the benefit of and be binding upon LESSOR and LESSEE and their respective successors in interest and permitted assigns.

12.2 Assignment by LESSOR. LESSEE acknowledges and agrees that LESSOR may assign all or any part of its interest in the Rent to others ("Assignees"), and may collaterally assign, pledge, hypothecate, grant a security interest in, or otherwise transfer or encumber all or any part of its interest hereunder, in any Lease Schedule, in the Rent and/or in the Equipment to suitable Assignees without the consent of LESSEE.

13. DEFAULT BY LESSEE; REMEDIES.

14. MONITORING OF COLLECTION OF REVENUE FROM UNITS BY LESSOR. LESSEE agrees to permit LESSOR or LESSOR's representative to be present and to monitor and confirm the collection and counting of all revenues taken from all Units provided by LESSOR to LESSEE under this Agreement, whether such collection and count is on a daily or other schedule at the

election of LESSEE. Any disagreements that arise in regard to the amounts removed, documented and delivered to the back of house bank shall be immediately reported to LESSEE and LESSEE agrees to conduct an investigation and audit of the count and the handling of the funds. Any discrepancies that are discovered shall be addressed by an adjustment in the next calculation and payment of revenue to the LESSOR.

15. LIMITED WAIVER OF SOVEREIGN IMMUNITY; ARBITRATION.

16. NO MANAGEMENT OF GAMING. NOTWITHSTANDING ANY OTHER POSSIBLE CONSTRUCTION OF ANY PROVISION OF THIS LEASE OR ANY LEASE SCHEDULE, THE PARTIES ACKNOWLEDGE THAT IT IS NOT THEIR INTENTION THAT THIS LEASE BE AND THEY DECLARE THAT IN THEIR MUTUAL OPINION IT IS NOT A MANAGEMENT AGREEMENT OR MANAGEMENT CONTRACT. ALL MANAGEMENT DECISIONS RELATING TO THE OPERATION OF LESSEE’S GAMING OPERATIONS SHALL BE MADE BY LESSEE, ITS AGENTS, EMPLOYEES AND REPRESENTATIVES. LESSEE HAS COMPLETE DAY-TO-DAY MANAGEMENT AND CONTROL OF EVERY ASPECT OF THE OPERATIONS OF ITS GAMING OPERATIONS. THE PARTIES AGREE THAT IN NO EVENT SHALL LESSOR BE CONSIDERED A PARTNER OR JOINT VENTURER WITH LESSEE AND THAT IN NO EVENT SHALL LESSOR HAVE, POSSESS OR CLAIM TO POSSESS ANY PROPRIETARY INTEREST IN LESSEE’S GAMING OPERATIONS, INCLUDING THE PREMISES.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed and delivered as of the date first written above.

LESSEE:

LESSOR:

THE TRIBE

CASINO, LLC,

**, a federally recognized
Indian tribe**

a limited liability company

By: _____

By: _____

Its: _____

Its: _____

Practical Exercise 3

Directions: Review the contract and determine the Term, Compensation, any control issues and answer the questions below.

Term

1. What is the standard industry practice on terms for vendor contracts? _____

2. What is the Term of this Contract? _____

3. Does the Term raise any concerns with respect to the provisions of IGRA? _____

4. Does the Term limit choices for the Tribe in selecting alternate vendors? _____

Compensation

5. What is the standard industry practice with respect to compensation for gaming machine contracts? _____

6. What is the compensation of this contract? _____

7. Is the compensation justifiable based on the services being rendered? _____

Control

8. Without an approved management contract is a vendor allowed to control any aspect of the gaming operation? _____

Practical Exercise 3 (Continued)

- Common Areas of Machine Decision Making are:
 - Machine Choice (Section 3),
 - Accounting Procedures (Section 5.1),
 - Maintenance (Section 5.2) ,
 - Insurance (Section 9), and
 - Taxes (Section 10)

9. Based on the common areas identify who has the control **Lessee** or **Lessor**.

A. Machine Choice/Placement _____

B. Accounting Procedures _____

C. Maintenance _____

D. Insurance _____

E. Taxes _____

Practical Exercise 4: Misuse of Gaming Revenue

Scenario 1

Lessor from prior example has provided the Tribe with excellent service. At the annual Tribal Awards celebration, Tribal Chairman Ted presents Lessor with a plaque and a tribal council resolution that 13-01 which read:

Whereas, Lessor's performance under the Exclusive Lease Agreement beyond expectations.

Whereas, Net Gaming revenue increased 20% beyond our projected business plan.

Therefore, in recognition of your extensive contributions to the improvement of our Net Gaming Revenue for 2012-2013 we award you an award of 3% of net gaming revenue for Q4 of FY 2012.

Lessor was directed to pick up his bonus check in accounting the next day.

At the annual award celebration for 2013-2014, the Tribe again invited Lessor to the celebration. Lessor was unable to make it but did receive notice that he was being honored for his service like the year before and plaque was mailed. The following day, Lessor stopped by accounting, and expected his bonus check. It wasn't ready so he called the new Tribal Chairman, John, who wasn't sure but agreed to look into it. John was able to find a note in the audit file form 2012-2013, so TC John called Accounting and asked them to process the check.

At the annual award celebration for 2014-2015, again the Tribe awarded Lessor a plaque, and again he was unable to make it. When he stopped by accounting the following day, he came with the email notifying him of his plaque, and the resolution from 2012. Accounting cut the check.

Has anyone misused net gaming revenue? _____

Who? _____

How did they misuse the gaming revenue? _____

Scenario 2

After 24 months, Tribe is unable to make payments on both the gaming machines and the repayment of the loan. Lessor tells the GM to focus on the machine payments and they would worry about the loan repayment later. GM advises Accounting of the arrangement and for 12 months they make only machine payments and getting behind on the loan.

1. In month 36 of the 48 month term of the Lease Agreement, GM discovers they can now make the payments for both and resumes payments on the loan. Lessor tells GM that the payments they are making will only payoff the past due amounts at the default rate, and the currently due loan payments would continue to be late. GM accepts that statement and for 12 months makes only the overdue loan payments.

a. What interest rate is the loan being paid at now? _____

b. Is this a misuse of gaming revenue? _____

c. Who is at fault for this misuse, if there is one? _____

d. Why? _____

2. In month 36, Tribe now has the money to make the payments. GM hears that there is an opportunity for the Tribe to purchase the snack bar next door to the Casino. He has been authorized to develop the Casino when he sees an opportunity. GM stops in for lunch at the snack bar and the owner offers to sell him the place on the spot. GM has Accounting cut the check to the snack bar owner. Two weeks later, GM gets a resolution from the Tribal Council authorizing him to incorporate the snack bar into the Casino operations.

a. Was this a misuse of revenue? _____

b. If so, by whom? _____

c. When did a violation occur? _____

3. In month 36, Lessor stops GM and presents him with an opportunity to develop the snack bar. Lessor agrees to put up the money if GM will authorize the deal at the same rates as the current loan. GM agrees and continues to repay only the Lease Agreement fees and late loan repayment. More money is expended and the amount the Tribe owes increases. There is no tribal council resolution.

a. Was this a misuse of revenue? _____

b. If so, by whom? _____

c. When did a violation occur? _____

4. In month 36, Lessor buys the snack bar. He approaches GM about incorporating it into the re-design plan. GM Declines the offer in light of current financial issues. Lessor offers to lease the snack bar to the Tribe. GM agrees since the lease rate would be less than the expected loan payment. There is no tribal council resolution.

a. Was this a misuse of revenue? _____

b. If so, by whom? _____

c. When did a violation occur? _____
